IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2371 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

K.V. PATEL

Versus

DIRECTOR

Appearance:

MR PM RAVAL for Petitioners

Ms MANISHA LAVKUMAR, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/04/2001

ORAL JUDGEMENT

At the time of filing this petition, the petitioners, six in number, were working as Social Welfare Officers Class-II in Social Welfare Department of the State Government. The provisional seniority list for the cadre of Social Welfare Officers Class-II was published on 6.8.1982. It appears that the Government thereafter published revised provisional seniority list for the said cadre on 20.1.1988 and published final seniority list for the said cadre on 16.11.1988. In the meantime, the Departmental Promotion Committee met on

15.6.1987 and prepared the select list of Class-II officers fit for promotion to Class-I cadre. The Departmental Promotion Committee, therefore, operated the provisional seniority list dated 6.8.1982. Subsequently upon issuance of the revised provisional seniority list, some of the officers who obtained higher placement in the said revised provisional seniority list met the officers in the State Government and requested for reconsideration of the promotions granted earlier on the basis of the provisional seniority list dated 6.8.1982. By communication dated 12.6.1988 (Annexure "H"), the State Government informed the Association of the Gazetted Officers in the Social Welfare Department that no decision was taken to reconsider the promotions given on the basis of the provisional seniority list dated 6.8.1982, but when the revised provisional seniority list dated 20.1.1988 would be finalized, the question of deemed date will be taken up in accordance with the Rules. Thereafter, the final seniority list came to be published on 16.11.1988. Since the petitioners claimed to have been placed higher up in the final seniority list dated 16.11.1988, as compared to their placement in the provisions seniority list dated 6.8.1982, the petitioners were expecting to be promoted to Class-I cadre. As their hopes were belied, they filed the present petition in March, 1989.

2. In response to the notice issued by this Court, affidavit in reply dated 9.2.1990 came to be filed by Mr HV Patel, Under Secretary, Social Welfare Department stating that when the Departmental Promotion Committee met on 15.6.1987, the seniority list available with them was the provisional seniority list dated 6.8.1982 reflecting the position of Class-II officers as on 31.3.1982 and on the basis of the said selection, promotion orders came to be issued on 14.5.1987 and 26.4.1988. The relevant portion of the affidavit reads as under :-

> "I submit that after publication of seniority list dated 16.11.1988 the cases of eligible officers who have entered into zone of consideration by virtue of seniority list dated 16.11.1988 have been considered in the Departmental Promotion Committee met on 8.2.1989. I submit that before affecting actual promotion to suitable officers the Government is required to follow the certain procedure and also to consult Gujarat Public Service Commission as per the Rules. I submit that the Government has taken up the matter in consultation with G.P.S.C.

and making all attempts to finalize the promotion orders as soon as possible. I therefore submit that the grievance of the petitioners does not survive."

Thereafter petitioner No. 3 has filed further affidavit dated 1.7.2000 producing a copy of the notification dated 21.10.1991 promoting petitioner Nos. 2, 3, 4 and 6 to Class-I cadre.

3. The learned counsel for the petitioners, however, submits that the petitioners' grievance will survive in as much as petitioner Nos. 2, 3, 4 and 6 are given promotion as per the aforesaid notification dated 21.10.1991 only with prospective effect and they are not given any deemed date with effect from the date on which their juniors as placed in the seniority list dated 16.11.1988 were granted promotion. The learned counsel further submits that the grievance of petitioner Nos. 1 and 5 will survive in as much as they have not been promoted so far and even they have been superannuated in the meantime.

4. There appears to be considerable substance in the first grievance urged on behalf of petitioner Nos. 2, 3, 4 and 6. Since it is an admitted position that the promotion orders dated 14.5.1987 and 26.4.1988 were on the basis of the provisional seniority list dated 6.8.1982 and the said seniority list came to be finalized on 16.11.1988, the officers whose seniority came to be revised upwards in the final seniority list were entitled to have their case for promotion to class-I cadre considered on the basis of such finalized seniority. It is not the case of the Government that notwithstanding such revision in the seniority list, petitioner Nos. 2, 3, 4 and 6 were not found fit for promotion with effect from an earlier date when their juniors as per the seniority list dated 16.11.1988 were considered and found fit for promotion i.e. when the Departmental Promotion Council met on 15.6.1987. In this view of the matter, the respondents will have to be directed to consider the petitioners' case for deemed date of promotion to class-I cadre on the basis of their placement in the seniority list dated 16.11.1988.

5. As far as the second grievance is concerned, according to the learned counsel for the petitioners, petitioner No. 1-KV Patel retired on 31.8.1991 and, therefore, the case of petitioner No. 1 does not appear to have been considered when the cases of petitioner Nos. 2, 3, 4 and 6 were considered culminating into their

promotion order dated 21.10.1991. As far as petitioner No. 5 is concerned, he retired on 30.11.1995.

5. It appears from the pleadings of the parties especially the petition as well as the reply affidavit that the focus of the controversy in this petition was the question whether the Government was justified in not considering the case of the petitioners for promotion to class-I cadre on the basis of the finalized seniority list dated 16.11.1988. The facts of each individual petitioners are neither pleaded by the petitioners nor dealt with by the respondents in their reply affidavit. It would, therefore, be just and proper to direct the respondents to consider the case of petitioner Nos. 1 and 5 on the basis of their placement in the finalized seniority list dated 16.11.1988, on the basis of their relevant service records and in accordance with the Rules. If the said petitioners are also found fit for promotion, the respondents shall also consider whether they were required to be granted any deemed date of promotion i.e. 14.5.1987 when their juniors were promoted.

6. In the result, the petition is partly allowed. The respondents are directed to consider the case of petitioner Nos. 2, 3, 4 and 5 for deemed date of promotion to class-I cadre in the Social Welfare Department with effect from 14.5.1987 when their juniors in class-II as per the finalized seniority list dated 16.11.1988 were promoted to class-I cadre. This shall be done within three months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

As far as petitioner Nos. 1 and 5 are concerned, the respondents shall inform the said petitioners as to whether the case of the said petitioners were considered on the basis of their placement in the finalized list dated 16.11.1988. This reply shall be given to them within one month from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier. In case, the case of petitioner Nos. 1 and 5 were not considered on the aforesaid basis, the respondents shall consider their case on the basis of their placement in the finalized list dated 16.11.1988 in accordance with the Rules.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-